

SEP 24 1993

ARBITRATION FILE
SERIAL NO.

BEFORE THE ARBITRATOR

In the Matter of the Petition of

BUFFALO COUNTY HIGHWAY DEPARTMENT
EMPLOYEES, LOCAL 1625, AFSCME, AFL-CIO

To Initiate Arbitration
Between Said Petitioner
and

Case 47
No. 46810 INT/ARB-6316
Decision No. 27522-A

BUFFALO COUNTY (HIGHWAY DEPARTMENT)

Appearances:

Daniel R. Pfeifer, Staff Representative, appearing on behalf
of the Union.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by Richard
J. Ricci, appearing on behalf of the Employer.

INTEREST ARBITRATION AWARD

Buffalo County Highway Department Employees Local 1625,
AFSCME, AFL-CIO, (herein "Union") having filed a petition to
initiate interest arbitration pursuant to Section 111.70(4)(cm),
Wis. Stats., with the Wisconsin Employment Relations Commission
(herein "WERC"), with respect to an impasse between it and Buffalo
County (Highway Department), (herein "Employer"); and the WERC
having appointed the Undersigned as arbitrator to hear and decide
the dispute specified below by order dated February 9, 1993; and
the Undersigned having held a hearing in Alma, Wisconsin, on May
21, 1993; and each party having filed post hearing briefs, the last
of which was received July 12, 1993.

ISSUES

The parties' impasse relates to their calendar 1992-1993
agreement. The issues are framed by the final offers of each of
the parties. I summarize them as follows:

1. Probationary period: The Employer proposes to increase the
current probationary period of 60 days specified in Article XVI, to
six months. The Union wishes to retain the current 60 day
probationary period.
2. Wages: The Employer proposes to increase all wages across-the-
board by \$.35 per hour effective January 1, 1992 and \$.36 per hour
effective January 1, 1993, with the exception of the probationary
rate. The Employer proposes that the probationary rate be

increased from the current \$7.59 per hour to \$9.40 per hour effective January 1, 1992, and \$9.75 per hour January 1, 1993. It also proposes to increase the foreman rate by an additional \$.10 per hour effective January 1, 1992. The Union proposes a ". . . 4% increase [across-the-board] based on the weighted average wage" January 1 in each year of the agreement. It has not proposed any specific adjustment to the probationary or foreman rate. It has proposed that employees who operate the mower will receive the grade 5 (equipment operator) rate of pay while operating the mowers.

3. Under Article IX, Section 3, the Employer currently pays employees for 2/3 of their accumulated sick leave at the rate of \$5 per day upon the employee's death or retirement (55 or disability). The Union proposes to increase this to \$10. The Employer proposes to keep the current provision.

POSITIONS OF THE PARTIES

The Employer takes the position that the that the interests and welfare of the public support its position. Thus, it argues that there has been little or no growth in the local economy, that there has been a decline in tax base (loss of population and decline in property values). In its view, its overall economic position with respect to comparable counties has deteriorated significantly over the last few years. It notes that about 11% of the County's population is below the poverty level and Buffalo County has been hard pressed by the stagnant farm economy.

While the Employer concedes that is not a wage leader, it denies that any form of "catch up" pay increase is appropriate. First, the relative status of this county versus the wage rates of other counties has been long established. Second, the lower wage rates are justified in this county because of the comparatively weaker economy here. Third, it is the Employer's view that when the very generous longevity plan here is included in the comparison, the unit is reasonably comparatively well paid.

The Employer notes that there is an ambiguity in the Union's wage proposal in that it has proposed percentage increases across the board, but applied to the weighted average wage. In its view, this ambiguity should be sufficient reason, in and of itself, for the arbitrator to adopt the Employer's position.

The Employer also takes the view that comparisons to its other unit settlements should be given more weight than external comparisons, particularly, as here, when there is a long history of consistent internal settlements. It relies heavily on the fact that the paraprofessional unit voluntarily accepted the Employer's proposed increase in that bargaining unit. Additionally, the Employer argues it has been consistent in giving the non-union court house wage increases which were consistent with its offer

herein.

In any event, the Employer argues that its proposal is more consistent with the average increase in comparable counties when the actual cost of the wage lift in those contracts is considered. (It notes that Trempleau's settlement includes a specific health insurance buy out.)

It also argues that the Union's demand for mower pay is a significant change in the status quo and is not supported by the comparables. The Employer relies upon the testimony of Highway Commissioner Brevick that operating the county's mowers does not involve any additional skill level, while equipment operated by heavy equipment operators requires additional training and skill to operate. Additionally, it argues that the adoption of a task rate for mower duty is expensive and difficult for the Employer to administer. The Employer argues that the Union's proposed increase in sick leave payout is inconsistent with the internal comparables and, therefore, should not be changed. The Employer argues that its proposal to increase the length of the probationary period from 60 days to 6 months is consistent with the probationary period in other county units and those in comparable counties. It is proposing to do this in conjunction with a quid pro quo of an additional ten cents per hour.

The Union takes the position that it is entitled to a catch up increase to bring this unit's wage rates in line with the average of the comparable counties. It notes that since 1987, its relative position among comparable counties deteriorated and has remained lower than it was in 1987 and far less than the average of the wages paid in other counties. (It notes that the inclusion of Jackson County in some comparisons but not others creates the artificial appearance that Buffalo has caught up and, thus, Jackson County should be disregarded.) The Union argues that it has fallen further behind in 1993 primarily because Trempleau County settled its contract with not only a general increase, but a \$.55 per hour increase because those employees agreed to start paying 17.5% of their health insurance premium. The Union believes that since this unit already pays 20% of its health insurance premium, the total increase in Trempleau should be compared. It argues that the fact that the time it takes to achieve maximum rate in Buffalo County is shorter than in most comparable counties, is irrelevant in that most of the employees in this unit are long term employees who would have reached maximum rate in the other counties anyway. The Union contends the Employer's actions in granting widespread reclassifications and wage adjustments with respect to its non-union employees was inconsistent with its position herein and outweighs the settlement on the Employer's proposal in the small human services paraprofessional unit.

The Union denies that the Employer has offered a sufficient quid pro quo for a change in the probationary period in that the

Employer's offer would actually result in slightly less earnings for the beginning employee. Similarly, it argues that the external comparisons strongly support the Union's position on sick leave payout.

As to the mowing task rate, the Union argues that the equipment operator rate of pay is appropriate because the testimony at hearing shows that the tractor used is of the same size and horsepower as that used for the back hoe. Additionally, this is viewed as hot and dirty work in the unit. It also argues that the highway commissioner's testimony that this would be expensive to administer is not credible because he admitted that the county has shared positions (a person working at two different wage rates) and the contract provides for out of classification pay when employees perform the duties of a higher rated position.

The Union argues that the Employer's selection of comparison positions is not complete and, therefore, artificially deflates the comparative wages. It also challenges the "cast forward" method of costing in that that method does not reflect the actual cost of the proposal for the Employer. The Union notes that the Employer's proposal to provide an additional \$.10 per hour for the foreman is not justified by the evidence: the Employer has not had any difficulty filling foremen positions. The Union's offer is \$.01 per hour higher than the Employer's offer as to foremen. The Union also argues that even when longevity is considered, the unit's wages are lower than comparable. It relies upon a career earning analysis to demonstrate that conclusion.

DISCUSSION

The standards which arbitrators are to use in evaluating final offers as specified in Section 111.70(4)(cm), Wis. Stats., are:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of wages hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in

public employment in the same community and in comparable communities.

- f. Comparison of wages hours, and conditions of employment employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost of living.
- h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration, or otherwise between parties, in the public service or in private employment.

Wages

1. External Comparisons

Both parties have used the following counties for comparison; Clark, Dunn, Jackson, Monroe, Pepin, Pierce and Trempleau. The benchmark position comparisons offered by the parties differ largely because the duties of some positions in this county are split between two classifications in other counties. Taking into account the fact that the Employer's comparisons slightly understate the comparisons by using only the lower rates, when these comparisons are used, Buffalo's wage rates are lower than average in the benchmark positions of patrolman, heavy equipment operator and mechanic. They are:

		1991 maximum wages	
	Buffalo	rank	average
patrolman	\$9.88	7	10.66
heavy equip.	10.10	6	10.86
mechanic	10.20	7	10.99

The Employer correctly notes that Buffalo County has an unusually high paying longevity program. It is often difficult in arbitration cases to make comparisons because there are differences in the total package of compensation among comparable groups of employees. These often occur because of differences in the local negotiation process. The total compensation criterion requires that arbitrators base their primary comparisons on the total compensation of employees to fairly account for these differences and to avoid frustrating the local bargaining process. When longevity is included, the analysis looks as follows:

1991 maximum wages with longevity			
	Buffalo	rank	average
patrolman	10.77	5	10.74
heavy equip.	11.01	5	10.94
mechanic	11.12	5	11.08

By this comparison, the highest rates in this unit are comparable to the highest rates in comparable units. 22 of the forty employees in the unit will be at the maximum longevity rate. Because it takes longer to achieve the maximum longevity rates in Buffalo than it takes to reach maximum rates in comparable units, the career earnings of a unit employee in Buffalo County are considerably less than those of employees in comparable counties.

Overall, the wages in this unit are somewhat less than those of comparable employees in comparable units. Thus, the wage rate comparisons tend to favor the Union position.

Many of the settlements for 1992 and 1993 involve split increases which produce a greater increase in the wage rates than average increase over the year. All of the comparable counties are settled for 1992 and 1993, except Monroe is not settled for 1993. The average of these wage increases for 1992 are 3.6% increase with a final wage rate increase of 3.8%. In 1993, both Trempleau and Pepin Counties granted wage increases in addition to their general increase for the express purpose of "buying out" health provisions. Ignoring these buy outs, the average increase of the settled comparable counties for 1993 is 3.4% with a wage rate increase of 3.75%. With these increases included the wage increase would average 4.1% with an average wage rate increase of 4.8%. The total compensation criterion requires an analysis to determine whether these additional increases represent changes already made at Buffalo, but the evidence is insufficient to make such an analysis. Based upon the available evidence the average increase figures slightly favor the Employer position while the average wage rate increase figures slightly favor the union position.

1. Internal Comparisons

This unit is comprised of about 40 employees. There are two

other collective bargaining units in Buffalo County. There has been a long history of identical settlements among the bargaining units and comparable treatment of the unrepresented employees. One is the much smaller human services unit which is also represented by AFSCME. The sheriff's department unit is the smallest unit. The Employer made final wage offers consistent with its offer made here. The human services unit voluntarily accepted the Employer's offer. At the time of hearing, the Employer and the sheriff's unit were in arbitration. The Employer submitted the award in its favor after the close of hearing and I admitted the same into evidence over the Union's objection. The arbitrator awarded the Employer's offer of 3.5% in each year.

The Employer has about 16 supervisory/managerial employees and about 22 non-supervisory employees in the non-union unit. [It is unclear how many employees are in each classification.] It provided a 3.5% general increase for 1992 for all of these employees. Every employee thus received a minimum of 3.5% increase for each year of 1992 and 1993. Many employees in this group received step increases on salary schedules which have been long established. Not all employees are on the same salary schedule. Progression on established schedules is not inconsistent with the Employer's position herein.

However, the Employer also made some adjustments to the salaries of some of the 22 non-supervisory employees in this unit. The testimony is not entirely clear on this issue. It appears that in some cases, it added new steps to the salary schedules of certain employees and then gave them the newly added movement. In some cases, the Employer ostensibly reclassified some of these non-supervisory employees to newly created or existing higher classifications, allegedly on the basis that they are now performing higher rated duties. The Employer created five new salary schedules for the relevant period. Of those, 4 non-supervisory employees were moved to newly created salary schedule lanes created between the existing lanes in the Employer's eleven lane system. [Employer exhibit 24, however, only specifies 3 such employees.] An Employer witness testified that an additional step is as much 2.95% to a maximum of 3.2%. (Although, it appears that the step increase from probationary to permanent positions generally exceeds 3.2%.) 3 (apparently non-probationary) employees, the janitor, county technician, and senior project manager, received increases including step increases which exceed 6.7% in one or more of the two years. These increases total as much as 10.3%. Three non-probationary employees apparently had an additional step added to their schedule, Extension-Administrative Secretary, Administrative Assistant, Senior Watershed Technician and Law Enforcement Administrative Assistant, in that they received only an across the board adjustment in 1992 and a step increase in 1993. One employee, the time keeper, received no increase in either year. It is unclear if the position is actually filled. It is important to note that the demands of supervisory and

managerial positions and the market they are in often may reasonably lead to pay increases beyond a cost of living type adjustment. Although it is not determinative in this case, the Employer's treatment of its supervisory employees in this case also demonstrates widespread increases in excess of 6.7%. 7 of the Employer's 16 supervisory/managerial received such adjustments. These range as high as 20.2% and many are well above 10%. In the highway unit and other bargaining units, there has been a history of making inequity type adjustments in addition to general wage increases. Both parties are making proposals for such adjustments in their final offers. Ordinarily, a small number of inequity adjustments are properly disregarded in comparing internal wages increases. However, given the high proportion of the non-union employees who received extra-ordinary increases and the nature of those increases, I conclude the conduct of the Employer in its treatment of the non-union, non-supervisory employees is more than mere inequity adjustments and I conclude that the Employer has been fundamentally inconsistent in its treatment of the non-union employees.

The Employer correctly argues that internal comparisons are a factor often deserving of heavy weight. The use of such comparisons encourages voluntary settlements and produces results consistent with sound collective bargaining. However, the facts in this case establish internal precedents more consistent with the Union position. First, this unit is the largest of the collective bargaining units which suggests that this is a unit one would expect to be precedent setting, rather than precedent following in collective bargaining. Second, while there has been no explanation of the settlement in the human services unit, the award in the sheriff's unit arbitration is based upon a rationale which is not consistent with the facts in this unit. At page 6 of that award, the rationale of the arbitrator suggests that external comparability supported the position of the Employer and rejected an argument that a larger increase was needed for "morale." There is no indication that anyone argued that the wage rates in the police unit were comparatively lower than those in comparable counties. While the arbitrator did not mainly rely on internal comparability, there was no discussion of the Employer's treatment of the non-union employees. It would appear from the findings in that award that the police unit is comparatively better paid when compared to the comparable counties' police units than the highway department is when compared to comparable counties' highway departments.

Task Rate

The Union has proposed that the mower operator be paid the heavy equipment operator rate while operating the mower. It is undisputed that operating the mower is hot and dirty work. Both the current operator and highway commissioner testified about the nature of this work. Mr. Glentz, the operator, testified that the

Employer has obtained new mowers which are larger than the former mowers. The new mowers are rotary mowers which are the same size and horsepower as the Employer's back hoe which commands a heavy equipment operator to operate them. Occasionally, some of the heavy equipment operators are assigned to operate the mower at their rate. Both Commissioner Brevic and Mr. Glentz testified that unlike the back hoe, there is no training required for one to learn to operate the mower. The evidence is insufficient to conclude that the operation of the mower is equivalent to heavy equipment operation.

Although the Employer does pay people out of classification pay when they perform the duties of higher rates position, there is no evidence that the parties have ever agreed to a task rate. The Employer correctly argues that the cost of administration of this proposal is unwarranted. The Employer's position on this issue is entirely correct. Both parties have treated this issue as a minor issue. While it is true that this is less important than the wage issue, the incidental and unwarranted creation of this precedent setting task rate is a heavy negative in the overall evaluation of the Union's position.

Other Issues

The issues as to the supplemental increase in the probationary rate, foreman rate and sick leave payout are minor and do not affect the result in this case. The evidence in this case indicates that the starting rate is very low and there is an unusually sizable increase after the completion of the sixty day probationary period. Further, the record demonstrates that there is very little turnover in this unit. The Employer's proposed restructuring the probationary period combined with a rate increase to offset the economic loss is highly favored. This is in the interest of both sides, enabling the Employer to better compete in the market for new employees and to evaluate them thoroughly. The Employer's position on that issue is favored.

cost of living

The annual change in the applicable cost of living index for December, 1991 and December, 1992, respectively was 2.7% and 2.4%. The Employer's total package offer compares favorably for both years and this factor favors the Employer's position.

Interests and Welfare of the Public

The data offered by the Employer indicates that Buffalo County's general economic climate has been deteriorating in relation to the agreed upon comparable counties. Buffalo County's population has declined more than the comparable counties. Property values in this area have declined 16.65% between 1991 and 1985, 7% more than any comparable county except Clark. Similarly,

incomes in Buffalo County have declined in comparison to other counties. Consequently, the tax effort of Buffalo County has been rising in comparison to that in comparable counties. This factor clearly supports restraint in wage increases in general in this county.

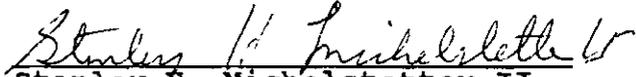
Summary

The wage increase is clearly the determinative issue. The Employer correctly argues that internal comparability ought to be given highest priority. For this contract term the Employer has been making extensive adjustments in the non-union unit in addition to the general wage increase to more competitively pay its employees. The comparability data in this case suggests that this bargaining unit is in need of some modest adjustment to bring this bargaining unit into comparatively the same position as its other units. The wage increase proposed by the Union is consistent with this needed change and is consistent with the very limited ability of this County to make such adjustments.

AWARD

That the parties' 1992-1993 agreement contain the final offer of the Union.

Dated at Milwaukee, Wisconsin, this 21st day of September, 1991.


Stanley A. Michelstetter II
Arbitrator